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MODERN POLITICAL TRIALS
(LAW 342H1S/HIS 1271)

Volume 1

Professor Michael R. Marrus

Winter 2010

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UNIVERSITY OF TORONTO
Faculty of Law/Department of History

LAW 342H1S/HIS 1271
Modern Political Trials
Winter Term, 2010

Falconer Hall, Room 1 (FA 1)
84 Queen's Park

Thursdays: 10:30 a.m. to 12:20 p.m.

What are political trials? According to one recent definition, these are trials in which the outcome "depends on an evaluation of the defendant's political attitudes and activities." Among other things, this seminar course will test that definition, and begins with the hypothesis that there can be other sorts of political trials, in which courtroom arguments speak to issues of political importance in different societies. Many different circumstances, it should be come clear, can contribute to making trials political. To examine these propositions, we will look at European, North American and Israeli trials in the nineteenth and twentieth centuries. The approach will be interdisciplinary, and will draw upon legal, political, historical and social analyses of the various trials selected for the course.

This year's topics, together with the trials that highlight them, will be:

- Politics and Madness: Daniel McNaughtan and the Insanity Defense, 1843
- Treason: The Queen v. Louis Riel, 1885
- Homosexuality: The Trials of Oscar Wilde, 1895
- Terrorism: Dealing with the Assassinations of Simon Petlura, 1927 and King Alexander of Yugoslavia, 1934
- Show Trial: The Case of the Anti-Soviet Bloc of Rights and Trotskyites, 1938
- International Criminal Law: The Trial of the Major German War Criminals at Nuremberg, 1945-46
- Holocaust: The Attorney General of Israel v. Adolf Eichmann, 1962
- Atrocity: My Lai and the Trial of Lieutenant William Calley, 1970
- Crimes against Humanity: Touvier-Barbie-Papon, 1964-99
- Law and History: Irving v. Penguin, Limited & Deborah Lipstadt, 2000
- Holocaust Restitution: Art, 1995 – present

Students should purchase the case book for this course, available in the Faculty of Law Bookstore:

Modern Political Trials: LAW 342H1S/HIS 1271 **(Faculty of Law, 2008)**

Students may also wish to consult the remarkable Web site "Famous Trials," by Professor Douglas Linder of the University of Missouri-Kansas City School of Law, for a wealth of material on "famous trials":
http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm

Office Hours:

Tuesdays and Fridays, 9:00 to 10:00 a.m., or by appointment. My office is in Massey College, II-3. I can be most easily reached via email: michael.marrus@utoronto.ca or by telephone at Massey (416-946-0648).

Email:

While I will respond quickly to all appropriate email messages, these should be limited, for the most part, to communications regarding office appointments, specific reading assignments, etc. Questions that could be of interest to all students should be raised in class.

Course Requirements and Grade Distribution:

Essays: One short essay (1500 words) comparing two of the trials discussed in the course, due on **February 26**, and worth 15 percent; and one longer essay (7500 words), entitled "Reflections on Political Trials," drawing upon themes discussed in the course, due at noon on **April 30**, and worth 70 percent. *Please note: The deadline for the final submission of papers is fixed by the faculty and I cannot grant extensions beyond that point except in emergency situations and then through a university established process.*

Participation: 15 percent, based on attendance and class participation.

Academic Misconduct:

Students should know and understand the University's *Code of Behavior on Academic Matters*, particularly its sections dealing with plagiarism. For further information, please see http://www.utoronto.ca/govcncl/pap/policies/behaveac.html

SEMINAR	TOPIC AND ASSIGNED READING
January 7	**Introduction**
January 14	**Politics and Madness: Daniel McNaughtan and the Insanity Defense, 1843**

Richard Moran, *Knowing Right from Wrong: The Insanity Defense of Daniel McNaughtan* (New York: The Free Press, 1981), 1-6, 77-142.

Supplementary:

Richard Moran, "The Modern Foundation for the Insanity Defense: The Cases of James Hadfield (1800) and Daniel McNaughtan (1843)," *Annals of the American Academy of Political and Social Science*, 477 (1985), 31-42.

Joel Peter Eigen, "Lesion of the Will: Medical Resolve and Criminal Responsibility in Victorian Insanity Trials," *Law & Society Review*, 33 (1999), 425-59.

Morris B. Hoffman and Stephen J. Morse, "The Insanity Defense Goes Back on Trial," *New York Times*, July 30, 2006.

January 21 **Treason: The Trial of Louis Riel, 1885**

Doug Linder, "The Trial of Louis Riel" (2004), *Famous Trials*, 1-6. http://www.law.umkc.edu/faculty/projects/ftrials/riel/rielaccount.html

Desmond Morton, ed., *The Queen v Louis Riel* (Toronto: University of Toronto Press, 1974), 2-7, 194-215, 239-68, 284-351, 371-2.

Supplementary:

Maggie Siggins, *Riel: A Life of Revolution* (Toronto: HarperCollins, 1994), 410-48.

Thomas Flanagan, *"Louis Riel: Insanity and Prophecy," in* Howard Palmer, ed., *The Settlement of the West* (Calgary:Comprint, 1977), 15-36.

Thomas Flanagan and Neil Watson, "The Riel Trial Revisited: Criminal Procedure and Law in 1885," *Saskatchewan History*, XXXIV (1981), 527-73.

January 28 **Homosexuality: The Trials of Oscar Wilde, 1895**

Doug Linder, The Trials of Oscar Wilde," *Famous Trials*, 1-6. http://www.law.umkc.edu/faculty/projects/ftrials/wilde/wildeaccount.html

H. Montgomery Hyde, ed., *The Three Trials of Oscar Wilde* (New York: University Books, 1956), 105-339.

Supplementary:

Michael S. Foldy, *The Trials of Oscar Wilde: Deviance, Morality, and Late-Victorian Society* (New Haven: Yale University Press, 1997), 1-96.

February 4 **Terrorism: Dealing with the Assassinations of Simon Petlura, 1927 and King Alexander of Yugoslavia, 1934**

"Petlura Trial," *Time*, November 7, 1927.

Saul S. Friedman, *Pogromchik: The Assassination of Simon Petlura* (New York: Hart, 1976), 94-167, 306-43.

Film of the 1934 Assassination, Universal Studios, 3 min. 9 sec. http://www.youtube.com/watch?v=B0pyyt_G0U8

Alternative video, with musical sound track:

http://www.youtube.com/watch?v=SrruCOZwxKA

Ben Saul, "The Legal Response of the League of Nations to Terrorism," *Journal of International Criminal Justice*, 4 (2006), 78-102.

"Convention for the Prevention and Punishment of Terrorism, 19 League of Nations O.J. 23 (1938)," in M. Cherif Bassiouni, *International Terrorism: Multilateral Conventions (1937-2001)* (New York: Transnational Publishers, 2001), 71-8.

Supplementary:

David Engel, "Being Lawful in a Lawless World: The Trial of Scholem Schwartzbard and the defense of East European Jews," *Simon Dubnow Institute Year Book*, 5 (2006), 83-97.

February 11 **Show Trial: The Case of the Anti-Soviet Bloc of Rights and Trotskyites, 1938**

Robert C. Tucker, "Introduction: Stalin, Bukharin and History as Conspiracy," in Robert C. Tucker and Stephen F. Cohen, eds., *The Great Purge Trial* (New York: Grosset & Dunlap, 1965), ix-xlviii.

Trial Transcript, Robert C. Tucker and Stephen F. Cohen, eds., *The Great Purge Trial* (New York: Grosset & Dunlap, 1965), 5-37, 514-60, 656-68, 681-9.

Supplementary:

Stephen F. Cohen, *Bukharin and the Bolshevik Revolution: A Political Biography, 1888-1938* (new edn., Oxford: Oxford University Press, 1980), 372-81.

February 18 **Reading Week**

February 25 **International Criminal Law: The Trial of the Major German War Criminals at Nuremberg, 1945-46**

Michael R. Marrus, *The Nuremberg War Crimes Trial 1945-46: A Documentary History* (Boston: Bedford, 1997), 1-77.

International Military Tribunal, *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945- 1 October 1946*, 42 vols. (Nuremberg: International Military Tribunal, 1947), II: 98-105, 153-4. (Robert H. Jackson, Opening Address for the United States).

Michael R. Marrus, *The Nuremberg War Crimes Trial 1945-46: A Documentary History* (Boston: Bedford, 1997), 104-117, 180-3.

(Hermann Göring Testimony and Cross-Examination by Robert H. Jackson)

International Military Tribunal, *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945- 1 October 1946*, 42 vols. (Nuremberg: International Military Tribunal, 1947), I: 218-26, 247-57. (Judgment)

Supplementary:

Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven: Yale University Press, 2001), 38-64.

March 4 **Holocaust: The Attorney General of Israel v. Adolf Eichmann, 1962**

"Judgment," State of Israel, Ministry of Justice, *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem*, 9 vols. (Jerusalem: Trust for the Publication of the Proceedings of the Eichmann Trial, 1994), V: 2082-4.

Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven: Yale University Press, 2001), 97-182.

Supplementary:

Leora Bilsky, *Transformative Justice: Israeli Identity on Trial* (Ann Arbor, Michigan: University of Michigan Press, 2004), 85-165.

Covey Oliver, "Judicial Decisions," *American Journal of International Law*, 56 (1962), 805-45.

March 11 **Atrocity: My Lai and the Court Martial of Lieutenant William Calley, 1970**

Doug Linder, "An Introduction to the My Lai Courts-Martial," Famous American Trials: the My Lai Courts Martial, 1970 http://www.law.umkc.edu/faculty/projects/ftrials/mylai/Myl_intro.html

Michal R. Belknap, *The Vietnam War on Trial: The My Lai Massacre and the Court Martial of Lieutenant Calley* (Lawrence, Kansas: University Press of Kansas Press, 2002), 98-190.

James S. Olson and Randy Roberts, *My Lai: A Brief History with Documents* (Boston: Bedford/St. Martin's, 1998), 174-99.

March 18 **Crimes against Humanity: Touvier-Barbie-Papon, 1964-99**

Henry Rousso, "Did the Purge Achieve its Goals?" in Richard J. Goslan, ed., *Memory, the Holocaust, and French Justice: The Bousquet and Touvier Affairs* (Hanover: University Press of New England, 1996), 100-4.

Vivian Grosswald Curran, "Politicizing the Crime Against Humanity: the French Example," *Notre Dame Law Review*, 78 (2003), 677-710.

Leila Sadat Wexler, "The Interpretation of the Nuremberg Principles by the French Court of Cassation: From Touvier to Barbie and Back Again," *Columbia Journal of Transnational Law*, 32 (1994-1995), 292-389.

Leila Nadya Sadat, "The Legal Legacy of Maurice Papon," in Richard J. Goslan, ed., *The Papon Affair: Memory and Justice on Trial* (New York: Routledge, 2000), 131-60.

Supplementary:

Guyora Binder, "Representing Nazism: Advocacy and Identity at the Trial of Klaus Barbie," *Yale Law Journal*, 98 (1989), 1321-39, 1355-72.

March 25 **Law and History: Irving v. Penguin, Limited & Deborah Lipstadt, 2000**

Richard Evans, "History, Memory, and the Law: The Historian as Expert Witness," *History and Theory*, 41 (October 2002), 326-45.

Richard J. Evans, *Lying about Hitler: History, Holocaust, and the David Irving Trial* (New York: Basic Books, 2001), 1-39.

Deborah E. Lipstadt, *History on Trial* (New York: Harper Collins, 1985), 77-108, 127-49, 185-209, 254-64.

Mr. Justice Charles Gray, Judgement, April 11, 2000, Sections XIII-XIV. http://www.nizkor.org/hweb/people/i/irving-david/judgment-00-00.html

April 1 **Restitution: Art and the Holocaust, 1995 – present**

Michael Bazyler, *Holocaust Justice: The Battle for Restitution in America's Courts* (New York: New York University Press, 2003), Ch. 5

Michael R. Marrus, *Some Measure of Justice: The Holocaust Era Restitution Campaign of the 1990s* (Madison, Wisconsin: University of Wisconsin Press, 2009), Ch. 2.